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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,051	08/02/2001	Andrew Bell	1980044B-DIV	8076
28862	7590	12/30/2003		
HUDAK, SHUNK & FARINE, CO., L.P.A. 2020 FRONT STREET SUITE 307 CUYAHOGA FALLS, OH 44221			EXAMINER	RABAGO, ROBERTO
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/921,051	BELL ET AL.
	Examiner Rob Rábago	Art Unit 1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 10/9/03

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 32-77 is/are pending in the application.

4a) Of the above claim(s) 60-77 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 32,35,36,43-52 and 55-58 is/are rejected.

7)  Claim(s) 33,34,37-42,53,54 and 59 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's election of group I, claims 32-59 in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Claim Rejections - 35 USC § 112***

2. Claims 35, 36 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - (a) Claim 33 has been amended to recite "R' represents hydrogen or an anionic hydrocarbyl ligand" and applicants have not traversed the examiner's previous assertion that the accepted meaning of "hydrocarbyl" is a group consisting of carbon and hydrogen. Accordingly, this definition is used to interpret the scope of R'. As such, claims 35, 36 (as dependent thereon) and 43 are indefinite in view of these claims' inclusion of structures wherein the selections for group R' include groups which are clearly not hydrocarbons. Specifically, such groups include halogenated and other hetero-substituted groups which result in the structures being outside the scope of "hydrocarbyl". The scope of the claims is indefinite because it is not understood how heteroatom-containing structures could be within the scope of "hydrocarbyl".

***Claim Rejections - 35 USC § 102***

3. Claims 32 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Suld et al. (US 4,100,338) for the reasons set forth in item 7 of the Office action mailed 6/9/2003.

4. Claims 32, 44-51, 55, 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 5,714,556) for the reasons set forth in item 9 of the Office action mailed 6/9/2003.

5. Claims 32, 44-52, 55, 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okamoto et al. (US 5,629,398) for the reasons set forth in item 10 of the Office action mailed 6/9/2003.

6. Applicant's arguments filed 9/12/2003 have been fully considered but they are not persuasive. Applicants argue essentially the same point with respect to all three references. Traversal is based upon the assertion that the references describe compositions which result in a polymerization, and are therefore outside the scope of the claims because the claimed compositions are not intended to polymerize. However, this argument is ineffective because it is based upon limitations which are entirely lacking in the claims. There is nothing in the claims which precludes a polymerization reaction, or any other reaction. All of the claims include the open-ended structure of

independent claims 32 and 44 which recites that the composition "comprise" certain components, and therefore the claims are open to any and all additional components, including those which induce polymerization. As currently drafted, the claims are anticipated or rendered obvious by any composition which includes the minimum claimed components, regardless of whether additional components or reaction processes occur.

***Allowable Subject Matter***

7. Claims 33, 34, 37-42, 53, 54 and 59 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

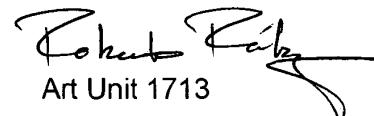
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:30 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

**ROBERTO RABAGO**  
**PATENT EXAMINER**

  
Art Unit 1713

RR  
December 27, 2003